

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-088**

DAYMON DUVALL

APPELLANT

VS. RECOMMENDED ORDER OF DISMISSAL

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

**** ** * * ***

This matter came on for an evidentiary hearing on December 7, 2012, at 9:30 a.m. at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant Daymon Duvall was present and not represented by legal counsel. Appellee Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Wesley Duke.

The issues for the evidentiary hearing were the Appellant's challenge to the promotion of Joseph Graham to Correctional Sergeant at the Kentucky State Reformatory and that such promotion did not follow the statutory requirements set forth at KRS 18A.07541(4)(f) and the regulatory requirements set forth at 101 KAR 1:400. Also at issue are appellant's claims of retaliation as detailed in the Interim Order issued from the May 31, 2012 pre-hearing conference. Additionally, appellant's claims of age discrimination as a pattern existing during the calendar year 2012 as to any promotions he did not receive. The Appellant was to bear the burden of proof to demonstrate these claims which was to be by a preponderance of the evidence.

Prior to going on the record, it was determined that the issues mentioned above all related to the said promotion of Joseph Graham to Correctional Sergeant at the Kentucky State Reformatory.

Immediately upon going on the record, the Appellee, Justice and Public Safety Cabinet, Department of Corrections, made its motion to dismiss the Appellant's appeal on the basis that the Appellant was not on the register for the position in which Mr. Graham eventually was promoted to. The argument of the Appellee being that the Appellant was not even eligible to be considered for the promotion and that the same could therefore not be challenged at this point. Additionally, the remaining issues related to the subject promotion also became moot as a result of this fact.

The Appellant responded by stating that he was aware there was a problem with him getting on to the register and that he attempted to get that straightened out. The bottom line being that he was unable to get himself placed on the subject register which had already closed. The Appellee further argued that it relies upon the Personnel Cabinet to prepare the final register of applicants and that the failure to include the Appellant was outside of its control.

Upon consideration of the motion, this Hearing Officer indicated that there were two options. The first was to grant the Appellee's motion and dismiss the Appellant's appeal outright. The second was to add the Personnel Cabinet as a party to the Appellant's instant appeal. In response to these options, the Appellant indicated that he was no longer interested in pursuing the job in question and that he did not desire to bring in the Personnel Cabinet and

pursue this appeal any longer. Whereupon, this Hearing Officer **GRANTED** the Appellee's motion to dismiss the Appellant's appeal on the basis that the Appellant had no standing to challenge the same given the fact he was not on the official register for the position.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DAYMON DUVALL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS** (Appeal No. 2012-088) be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Geoffrey Greenawalt** this ____ day of December, 2012.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK

EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Wesley Duke
Daymon Duvall